

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SUZANNE SAVEDRA YOUNGBLOOD,

Petitioner,

No. CIV S-02-2387 ALA HC

vs.

PLACER COUNTY PROBATION DEPT., et al.,

Respondents.

ORDER

Petitioner is proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. In 1999, petitioner was convicted in the Superior Court of Placer County for cruelty to animals. She was sentenced to 92 days in county jail and five years of probation.

I

On direct appeal, the California Court of Appeal summarized the facts underlying petitioner's conviction and sentence as follows:

On December 31, 1998, Officer Robert Carter of Placer County Animal Control responded to a complaint that an excessive number of cats were being kept under poor health and living conditions in a small trailer. Officer Carter went to the property and saw a residence with a small trailer near the garage. He smelled a strong odor of ammonia which he associated with animal urine, when he left his truck and started toward the residence.

Terrance Deveany, the owner of the property, responded when

1 Officer Carter knocked on the door. Deveany told Officer Carter
2 the trailer belonged to the defendant.

3 Officer Carter approached the trailer and looked inside through the
4 windows. He saw at least 35 cats in the trailer. At various places
5 in the trailer, he saw fecal matter and urine. Many of the cats were
6 sneezing and had eye discharge. Officer Carter telephoned the on
7 call magistrate and obtained a search warrant for the trailer. The
8 officer then called for a tow truck. As they were hooking the
9 trailer to the tow truck, the defendant arrived at the property. She
10 stated she was taking care of the cats and believed there were
11 between 80 and 90 in the trailer. She tried to give Officer Carter a
12 vial with medicined for the cats, but he would not accept it because
13 it was not adequately marked. The trailer was towed to the DeWitt
14 Center so it could be placed in the building before being opened to
15 prevent loss of control of the cats.

16 When the trailer was first opened at the DeWitt Center, Officer
17 Carter entered with a video camera and recorded the conditions
18 inside the trailer. The videotape was played for the jury.

19 The cats, 92 in all, were removed from the trailer and assigned
20 numbers for identification. Most of the cats appeared unhealthy.
21 They were examined and treated by a veterinarian. Her initial
22 summary of the condition of the cats is as follows: "Most of the
23 cats were covered in urine and feces. There [were] many that were
24 malnourished, emaciated. Cats were sick with upper respiratory,
25 herpes virus. They had ear mites, fleas. There were cats with
26 neurologic[al] problems. There [were] cats that were missing
portions of their limbs or had deformed limbs. There [were] cats
with urine scald, and there [were] cats that were either blind or
partially blind in one or both eyes and cats that were missing eyes,
too." The veterinarian also described other ailments suffered by
the cats. Many of the problems described by the veterinarian, such
as dehydration, chronic malnourishment, anorexia, urine scald, and
severe infection, occur as a result of inadequate care over a long
period.

20 The defendant testified. She lived in Sacramento County. In
21 October 1988, she put the cats, about 35 to 40 at the time, in the
22 trailer and moved them to the Deveany property in Placer County
23 because Sacramento Animal Control officials told her she could
24 not have more than four cats. She lived with the cats at first, either
25 in the trailer or in a tent next to the trailer, feeding the cats and
26 cleaning up after them. She brought additional stray cats from the
Sacramento County neighborhood to the trailer. Eventually, she
moved back to Sacramento County and visited the trailer to care
for the cats. During the last two weeks before animal control
seized the trailer, the defendant was sick and did not visit the cats
as often. She contended that the messy conditions in the trailer
were a result of the removal of the trailer to the DeWitt Center.

1 She knew she had too many cats, but she asserted she was trying to
2 save their lives.

3 Answer, Ex. D at 2-4.

4 Petitioner's conviction and sentence were upheld on appeal. *Id.* at 31. Petitioner sought review
5 of the California Court of Appeal decision in the California Supreme Court. Answer, Ex. G.
6 Petitioner's request for review was denied without comment. Answer, Ex. H.

7 **II**

8 Federal habeas corpus relief is not available for any claim decided on the merits
9 in state court proceedings unless the state court's adjudication of the claim:

10 (1) resulted in a decision that was contrary to, or involved an
11 unreasonable application of, clearly established Federal law, as
determined by the Supreme Court of the United States; or

12 (2) resulted in a decision that was based on an unreasonable
13 determination of the facts in light of the evidence presented in the
State court proceeding.

14 28 U.S.C. § 2254(d).

15 Under section 2254(d)(1), a state court decision is "contrary to" clearly
16 established United States Supreme Court precedents if it applies a rule that contradicts the
17 governing law set forth in Supreme Court cases, or if it confronts a set of facts that are materially
18 indistinguishable from a decision of the Supreme Court and nevertheless arrives at a different
19 result. *Early v. Packer*, 537 U.S. 3, 8 (2002) (citing *Williams v. Taylor*, 529 U.S. 362, 405-406
20 (2000)).

21 Under the "unreasonable application" clause of section 2254(d)(1), a federal
22 court may grant an application for a writ of habeas corpus if the state court identifies the correct
23 governing legal principle from the Supreme Court's decisions, but unreasonably applies that
24 principle to the facts of the prisoner's case. *Williams*, 529 U.S. at 413. A federal habeas court
25 "may not issue the writ simply because that court concludes in its independent judgment that the
26 relevant state-court decision applied clearly established federal law erroneously or incorrectly.

1 Rather, that application must also be unreasonable.” *Id.* at 412; *see also Lockyer v. Andrade*,
2 538 U.S. 63, 75 (2003) (it is “not enough that a federal habeas court, in its independent review of
3 the legal question, is left with a ‘firm conviction’ that the state court was ‘erroneous.’”)

4 A federal court looks to the last reasoned state court decision as the basis for the
5 state court judgment. *Avila v. Galaza*, 297 F.3d 911, 918 (9th Cir. 2002). Where the state court
6 reaches a decision on the merits but provides no reasoning to support its conclusion, a federal
7 court must independently review the record to determine whether habeas corpus relief is
8 available under section 2254(d). *Delgado v. Lewis*, 223 F.3d 976, 982 (9th Cir. 2000). As the
9 last reasoned state court opinion in this matter, this court will review the decision of the
10 California Court of Appeal.

11 III

12 Petitioner alleges three claims concerning jury instructions. Petitioner contends
13 the trial court erred by refusing to instruct the jury on the defense of necessity resulting in a
14 violation of petitioner’s constitutional rights. Petitioner also argues that the trial court erred in
15 instructing the jury on the elements of Penal Code § 597(b). Petitioner further asserts that the
16 trial court erred when it failed to instruct the jury on an intervening superceding cause.

17 A

18 A challenge to jury instructions does not generally state a federal constitutional
19 claim. *See Middleton v. Cupp*, 768 F.2d 1083, 1085 (9th Cir. 1985) (*citing Engle v. Isaac*, 456
20 U.S. 107, 119 (1982)); *Gutierrez v. Griggs*, 695 F.2d 1195, 1197 (9th Cir. 1983). Habeas corpus
21 is unavailable for alleged error in the interpretation or application of state law. *Middleton*, 768
22 F.2d at 1085; *see also Lincoln v. Sunn*, 807 F.2d 805, 814 (9th Cir. 1987); *Givens v.*
23 *Housewright*, 786 F.2d 1378, 1381 (9th Cir. 1986). However, a “claim of error based upon a
24 right not specifically guaranteed by the Constitution may nonetheless form a ground for federal
25 habeas corpus relief where its impact so infects the entire trial that the resulting conviction
26 violates the defendant’s right to due process.” *Hines v. Enomoto*, 658 F.2d 667, 672 (9th Cir.

1 1981) (citing *Quigg v. Crist*, 616 F.2d 1107 (9th Cir. 1980)); *See also Prantil v. California*, 843
 2 F.2d 314, 317 (9th Cir. 1988) (To prevail on such a claim petitioner must demonstrate that an
 3 erroneous instruction “so infected the entire trial that the resulting conviction violates due
 4 process.”) The analysis for determining whether a trial is “so infected with unfairness” as to rise
 5 to the level of a due process violation is similar to the analysis used in determining, under *Brecht*
 6 *v. Abrahamson*, 507 U.S. 619, 623 (1993), whether an error had “a substantial and injurious
 7 effect” on the outcome. *See Thomas v. Hubbard*, 273 F.3d 1164, 1179 (9th Cir. 2001), overruled
 8 on other grounds by *Payton v. Woodford*, 299 F.3d 815, 828 n.11 (9th Cir. 2002).

9 At trial, petitioner claimed that she was keeping the cats to avoid euthanasia. She
 10 requested the jury be instructed on the defense of necessity. Petitioner claims that the trial
 11 court’s refusal to instruct the jury on the defense of necessity violated her federal constitutional
 12 rights. The California Court of Appeal rejected this argument. It held that the defense of
 13 necessity was not available to petitioner under the facts of the case. Answer, Ex. D at 16-19.

14 In support of its conclusion the California Court of Appeal stated that

15 [n]ecessity is an affirmative public policy defense, in
 16 effect a plea in avoidance and justification, which comes into focus
 17 only after all elements of the offense have been established. When
 18 public policy considerations do not support a defense of necessity,
 19 the trial court need not instruct on that defense.

20 Since the defense of necessity is based on public policy, we
 21 must look to public policy to determine whether the defense was
 22 available to the defendant on the facts presented here. Aside from
 23 constitutional policy, the Legislature, and not the courts, is vested
 24 with the responsibility to declare the public policy of the state.

25 The duties of a facility that acts as a depository of living
 26 animals are spelled out in the Civil Code. “A depository of living
 animals shall provide the animals with necessary and prompt
 veterinary care, nutrition, and shelter, and treat them kindly.” The
 Legislature has expressly stated the public policy of this state
 concerning euthanasia of animals. If an animal is adoptable or,
 with reasonable efforts, could become adoptable, it should not be
 euthanized. However, if an animal is abandoned and a new owner
 cannot be found, the facility shall thereafter humanely destroy the
 animal so abandoned. Particularly relevant to this case and the
 defendant’s assertions is a finding made by the Legislature in
 1998: “The Legislature finds and declares that it is better to have
 public and private shelters pick up or take in animals than private

1 citizens.”

2 Answer, Ex. D at 17-18 (citations omitted). The California Court of Appeal held that keeping
3 the cats to prevent them from potentially being euthanized was contrary to public policy. *Id.* at
4 19. The California Court of Appeal concluded, therefore, that the trial court acted properly in
5 denying petitioner’s request for an instruction on the defense of necessity. *Id.*

6 Because the omission of an instruction is less likely to be prejudicial than a
7 misstatement of the law, a habeas petitioner whose claim involves a failure to give a particular
8 instruction bears an especially heavy burden. *Henderson v. Kibbe*, 431 U.S. 145, 155 (1977).
9 Petitioner has not overcome that burden. The defense of necessity is available when supported
10 by public policy. *See U.S. v. Schoon*, 971 F.2d 193, 197 (9th Cir. 1991) (“Necessity is,
11 essentially, a utilitarian defense. It therefore justifies criminal acts taken to avert greater harm,
12 maximizing social welfare by allowing a crime to be committed where the social benefits of the
13 crime outweigh the social costs of failing to commit the crime.”). Here, public policy requires
14 that stray animals be placed in shelters. Petitioner’s keeping the cats to prevent them from
15 potentially being euthanized was contrary to that public policy. Since petitioner’s actions
16 contradicted public policy, petitioner was not entitled to have the jury instructed on the defense
17 of necessity.

18 Therefore, the refusal by the trial court to instruct the jury on the defense of
19 necessity was not a violation of federal law, was not an unreasonable application of law to facts
20 and did not render petitioner’s trial fundamentally unfair.

21 **B**

22 Petitioner also maintains that the trial court erred in instructing the jury on the
23 elements of Penal Code § 597(b). The trial court instructed the jury that “Penal Code § 597(b)
24 imposes criminal liability if there is proof of three elements as opposed to four.” Petition at 5.

25 California Penal Code § 597(b) reads as follows:
26

1 Except as otherwise provided in subdivision (a) or (c), every
2 person who overdrives, overloads, drives when overloaded,
3 overworks, tortures, torments, deprives of necessary sustenance,
4 drink, or shelter, cruelly beats, mutilates, or cruelly kills any
5 animal, or causes or procures any animal to be so overdriven,
6 overloaded, driven when overloaded, overworked, tortured,
7 tormented, deprived of necessary sustenance, drink, shelter, or to
8 be cruelly beaten, mutilated, or cruelly killed; *and whoever*, having
9 the charge or custody of any animal, either as owner or otherwise,
10 subjects any animal to needless suffering, or inflicts unnecessary
11 cruelty upon the animal, or in any manner abuses any animal, or
12 fails to provide the animal with proper food, drink, or shelter or
13 protection from the weather, or who drives, rides, or otherwise
14 uses the animal when unfit for labor, is, for every such offense,
15 guilty of a crime punishable as a misdemeanor or as a felony or
16 alternatively punishable as a misdemeanor or a felony and by a
17 fine of not more than twenty thousand dollars (\$20,000).

18 Cal. Penal Code § 597(b) (emphasis added).

19 The trial court instructed the jury that

20 [e]very person who causes an animal to be deprived of necessary
21 sustenance, drink or shelter or who having care or custody of an
22 animal subjects the animal to needless suffering or fails to provide
23 the animal with proper food, drink [or] shelter in a criminally
24 negligent manner is guilty of cruelty to an animal.

25 Answer, Ex. D at 5 (emphasis added).

26 The trial court also instructed the jury that

[i]n order to prove such a crime each of the following elements
must be proved: One, that a person has custody or is responsible
for providing care to an animal; two, that person either (a)
deprived or caused an animal to be deprived of necessary
sustenance, drink or shelter, *or* (b) subjected an animal to needless
suffering in a criminally negligent manner, and (c) that act or
omission caused danger to an animal's life.

Id. (emphasis added).

Petitioner alleges that the use of the disjunctive “or” instead of the conjunctive
“and” allowed the jury to find petitioner guilty based solely on the element of subjecting the cats
to needless suffering, whereas the statute requires the subjecting of needless suffering in addition
to the deprivation of sustenance, drink, or shelter. The California Court of Appeal rejected

1 petitioner's argument and held that the trial court interpreted the statute correctly. Answer, Ex.
2 D at 5-8.

3 The state court's rejection of the petitioner's claim is not contrary to or an
4 unreasonable application of federal law. Petitioner was not convicted of violating a federal
5 statute. Petitioner was convicted of violating a state statute. The California Court of Appeal
6 concluded that petitioner was correctly convicted under that state statute. The state court's
7 conclusion in this regard may not be set aside in this federal habeas corpus proceeding. *See*
8 *Estelle*, 502 U.S. at 67-68 (a federal writ is not available for alleged error in the interpretation or
9 application of state law); *Aponte v. Gomez*, 993 F.2d 705, 707 (9th Cir. 1993) (federal courts are
10 "bound by a state court's construction of its own penal statutes"); *Oxborrow v. Eikenberry*, 877
11 F.2d 1395, 1399 (9th Cir. 1989) (a federal court must defer to the state court's construction of its
12 own penal code unless its interpretation is "untenable or amounts to a subterfuge to avoid federal
13 review of a constitutional violation"). The interpretation of the California statute by the
14 California Court of Appeal is not untenable and does not amount to a subterfuge. Therefore, this
15 claim does not support habeas corpus relief.

16 C

17 Petitioner claims that the trial court erred when it failed to instruct the jury on
18 intervening superceding cause. Petition at 6. Petitioner argued to the California Court of Appeal
19 that conduct of Placer County Animal Control employees in moving the trailer with the cats
20 inside was an independent superseding cause of their injury. The California Court of Appeal
21 held that the trial court did not err by refusing to give an instruction on intervening superceding
22 cause. Answer, Ex. D at 21-24.

23 The trial court's decision to deny the petitioner's request that the jury be
24 instructed on intervening superceding cause was not contrary to a clearly established federal law
25 nor was it an unreasonably application of law to facts, or rendered the trial fundamentally unfair.
26 While the transportation of the trailer with the cats inside may have contributed to the filthiness

of the trailer, the transportation could not have possibly caused the cats to suffer from herpes, eye and respiratory infections, urine scald, or malnourishment.

IV

A

Petitioner asserts that the trial court violated due process by refusing to allow her to present evidence that at least some of the cats found in petitioner's trailer would have been euthanized by Placer County Animal Control had petitioner not taken custody of those cats. Petitioner argued to the California Court of Appeal that this evidence was necessary both to her defense and for effective cross examination of an animal control officer. The California Court of Appeal rejected both claims. Answer, Ex. E at 19-21.

Petitioner's claim that evidence of euthanasia was necessary to her defense is based, in part, on the claim that she was entitled to have the jury instructed on the defense of necessity. The trial court ruled that evidence of euthanasia was not relevant to the issues in the case. Answer, Ex. D at 19. The California Court of Appeal found that prohibiting evidence of euthanasia did not violate petitioner's right to a fair trial because petitioner was not entitled to a jury instruction on the defense of necessity. *Id.* at 20.

Criminal defendants have a constitutional right, implicit in the Sixth Amendment, to present a defense; this right is "a fundamental element of due process of law." *Washington v. Texas*, 388 U.S. 14, 19 (1967). *See also Crane v. Kentucky*, 476 U.S. 683, 687- 690 (1986); *California v. Trombetta*, 467 U.S. 479, 485 (1984); *Webb v. Texas*, 409 U.S. 95, 98 (1972). The constitutional right to present a defense, however, is not absolute. *Alcala v. Woodford*, 334 F.3d 862, 877 (9th Cir. 2003). "Even relevant and reliable evidence can be excluded when the state interest is strong." *Perry v. Rushen*, 713 F.2d 1447, 1450 (9th Cir. 1983). Thus,

[w]here evidence has been excluded pursuant to a state evidentiary law, we use a balancing test: In weighing the importance of evidence offered by a defendant against the state's interest in exclusion, the court should consider the probative value of the evidence on the central issue; its reliability; whether it is capable

1 of evaluation by the trier of fact; whether it is the sole evidence on
 2 the issue or merely cumulative; and whether it constitutes a major
 3 part of the attempted defense. A court must also consider the
 4 purpose of the [evidentiary] rule; its importance; how well the rule
 5 implements its purpose; and how well the purpose applies to the
 6 case at hand. The court must give due weight to the substantial
 7 state interest in preserving orderly trials, in judicial efficiency, and
 8 in excluding unreliable or prejudicial evidence.

9 *Alcala*, 334 F.3d at 877 (quoting *Miller v. Stagner*, 757 F.2d 988, 994 (9th Cir. 1985)). A state
 10 law justification for exclusion of evidence does not abridge a criminal defendant's right to
 11 present a defense unless it is "arbitrary or disproportionate" and "infringe[s] upon a weighty
 12 interest of the accused." *United States v. Scheffer*, 523 U.S. 303, 308 (1998). *See also Crane*,
 13 476 U.S. at 689-91 (discussion of the tension between the discretion of state courts to exclude
 14 evidence at trial and the federal constitutional right to "present a complete defense"); *Greene v.*
 15 *Lambert*, 288 F.3d 1081, 1090 (9th Cir. 2002).

16 Petitioner was not entitled to argue the defense of necessity because petitioner's
 17 actions did not conform to the requirement that the alleged act be supported by public policy.
 18 The petitioner has failed to demonstrate a violation of a decision by the United States Supreme
 19 Court or an unreasonable application of the facts in issue. The exclusion of the evidence was not
 20 "arbitrary or disproportionate" nor did it infringe upon a weighty interest.

21 **B**

22 Petitioner also maintains that evidence of euthanasia was necessary for cross
 23 examination purposes. During testimony at petitioner's trial, an animal control officer became
 24 emotional while describing the death of one of the cats found in the trailer. Answer, Ex. D at 19-
 25 20. Petitioner's attempt to cross examine the witness regarding his emotional response to
 26 euthanasia was denied. *Id.* at 20. On appeal, petitioner claimed this denial inhibited her right to
 cross examine the witness. *Id.* The California Court of Appeal found that "[e]vidence of
 euthanasia to impeach the officer's credibility was so tangential to the issues legally involved in
 this case that we cannot say the trial court abused its discretion. The exclusion of evidence

1 concerning euthanasia was well within the trial court's authority." *Id.* at 21.

2 A state court's evidentiary ruling is not subject to federal habeas review unless the
3 ruling violates federal law, either by infringing upon a specific federal constitutional or statutory
4 provision, or by depriving the defendant of the fundamentally fair trial guaranteed by due
5 process. *See Pulley v. Harris*, 465 U.S. 37, 41 (1984); *Jammal v. Van de Kamp*, 926 F.2d 918,
6 919-920 (9th Cir. 1991). A federal court cannot disturb a state court's decision to admit evidence
7 on due process grounds unless the admission of the evidence was "arbitrary or so prejudicial that
8 it rendered the trial fundamentally unfair." *See Walters v. Maass*, 45 F.3d 1355, 1357 (9th Cir.
9 1995); *Colley v. Sumner*, 784 F.2d 984, 990 (9th Cir. 1986). *See also Mancuso v. Olivarez*, 292
10 F. 3d 939, 956 (2002) (a writ of habeas corpus will be granted for an erroneous admission of
11 evidence "only where the 'testimony is almost entirely unreliable and ... the factfinder and the
12 adversary system will not be competent to uncover, recognize, and take due account of its
13 shortcomings.'" (quoting *Barefoot v. Estelle*, 463 U.S. 880, 899 (1983)). In order to grant relief,
14 the habeas court must find that the error had "'a substantial and injurious effect' on the verdict."
15 *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993).

16 The proposed use of the evidence was tangential to the issues presented in the
17 case. While the animal control officer's testimony may have been key to the state's case,
18 impeachment or testimony concerning his feelings regarding euthanasia would not have disputed
19 the allegations that petitioner confined 92 cats, many of which were diseased, to a small trailer.
20 Given the limited probative value and relevance of any potential impeachment testimony, the
21 trial court's refusal to admit the evidence cannot be deemed arbitrary or so prejudicial that it
22 rendered the trial fundamentally unfair.

23 V

24 A

25 Petitioner claims that the California Court of Appeal refused to allow petitioner
26 to speak on the public policy issues present in her case. Petition at 5. The California Court of

1 Appeal denied petitioner's request for rehearing on the issue of public policy. Answer, Ex. F
2 (California Court of Appeal rehearing denial).

3 Beyond the mere statement of this claim in her petition, no further evidence or
4 authority has been presented to this court. Petitioner did not address this contention in her
5 petition or in her traverse. Petition cites no law or authority on which the court is supposed to
6 analyze this claim. Finally, petitioner has not demonstrated how the denial of her request for
7 rehearing has impacted her case. Therefore, petitioner has failed to carry her burden of showing
8 violation of federal law, or an unreasonable application of law to facts, regarding her ability to
9 speak on public policy.

10 **B**

11 Petitioner argues that the information did not provide adequate notice of the
12 theory of liability under which she was being charged, and did not provide notice "as to the
13 nature of the accusations against her." Petition at 5. The California Court of Appeal held that
14 the accusatory pleading provided petitioner with adequate notice of the charges pending against
15 her. Answer, Ex. D at 8-10.

16 A criminal defendant enjoys a fundamental right under the Sixth Amendment to
17 notice of the nature and cause of the charges filed in order to permit preparation of a defense.
18 *See* U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to
19 be informed of the nature and cause of the accusation . . ."); *Cole v. Arkansas*, 333 U.S. 196,
20 201 (1948) ("It is as much a violation of due process to send an accused to prison following
21 conviction of a charge on which he was never tried as it would be to convict him upon a charge
22 that was never made."); *In re Oliver*, 333 U.S. 257, 273 (1948) ("A person's right to reasonable
23 notice of a charge against him, and an opportunity to be heard in his defense-a right to his day in
24 court-are basic in our system of jurisprudence...."); *Jackson v. Virginia*, 443 U.S. 307, 314
25 (1979) ("[A] person cannot incur the loss of liberty for an offense without notice and a
26 meaningful opportunity to defend."); *Gautt v. Lewis*, 489 F.3d 993, 1002 (9th Cir. 2007) ("The

1 Sixth Amendment guarantees a criminal defendant the fundamental right to be informed of the
2 nature and cause of the charges made against him so as to permit adequate preparation of a
3 defense.”). The due process clause of the Fourteenth Amendment makes this right applicable to
4 the states. *See Cole*, 333 U.S. at 201 (“No principle of procedural due process is more clearly
5 established than that notice of the specific charge, and a chance to be heard in a trial of the issues
6 raised by that charge, if desired, are among the constitutional rights of every accused in a
7 criminal proceeding in all courts, state or federal.”).

8 A court must begin its analysis by looking at the content of the accusatory
9 pleading to determine if a defendant has received adequate notice of the charges against him.
10 *See Cole*, 333 U.S. at 198; *Gault*, 489 F.3d at 1003 (“When determining whether a defendant has
11 received fair notice of the charges against him, we begin by analyzing the content of the
12 information.”); *see also Lewis James v. Borg*, 24 F.3d 20, 24 (9th Cir.1994) (holding that to
13 determine whether the defendant had adequate notice, “the court looks first to the information,”
14 the “principal purpose of [which] is to provide the defendant with a description of the charges
15 against him in sufficient detail to enable him to prepare his defense”) (citing *Lincoln v. Sunn*,
16 807 F.2d 805, 812 (9th Cir.1987)); *cf. Stirone*, 361 U.S. at 217 (stating that under the Fifth
17 Amendment's right to a grand jury indictment, “a court cannot permit a defendant to be tried on
18 charges that are not made in the indictment against him”). “[T]o satisfy the Sixth Amendment,
19 ‘an information [must] state the elements of an offense charged with sufficient clarity to apprise
20 a defendant of what he must be prepared to defend against.’” *Gault*, 489 F.3d at 1003-1004
21 (citing *Givens v. Housewright*, 786 F.2d 1378, 1380 (9th Cir.1986); *Russell v. United States*,
22 369 U.S. 749, 763-64 (1962)). “An explicit citation to the precise statute at issue is best, but a
23 ‘brief factual recitation in the information’ can also suffice.” *Gault* 489 F.3d at 1004 (quoting
24 *Givens* 786 F.2d at 1381).

25 Petitioner was charged by way of felony complaint, which read . . .
26

[o]n or about December 30, 1998, in the County of Placer, State of California, the crime of CRUELTY TO ANIMALS-TORTURE, TORMENT OR DEPRIVE, in violation of section 597(b) of the Penal Code, a felony, was committed by Suzanna Savedra Youngblood, who did willfully, unlawfully cause numerous animals, to wit, 92 cats, to be deprived of necessary sustenance and drink, and having charge and custody of said animals, did fail to provide those animals with proper food, drink and shelter, and did subject said animals to needless suffering.

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The felony complaint thus provided both a citation to the precise statute at issue as well as a brief factual recitation. This allegation was sufficient to inform the petitioner of the nature and cause of the charges brought against her so as to allow preparation of a defense as required by the Sixth Amendment.

C

Petitioner claims that the trial court erred when it refused to impose sanctions on the prosecution for its failure to preserve evidence. Petition at 6. The California Court of Appeal held that the animal control officers' failure to preserve some trash bags and feed bowls did not violate the officers' duty to preserve evidence that might be expected to play a significant role in the suspect's defense. Answer, Ex. D at 10-15.

Due process requires that the prosecution disclose exculpatory evidence within its possession. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The failure to preserve evidence violates a defendant's right to due process only, however, if that evidence possessed "exculpatory value that was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Trombetta*, 467 U.S. at 489; *Cooper v. Calderon*, 255 F.3d 1104, 1113 (9th Cir. 2001). A defendant must also demonstrate that the police acted in bad faith in failing to preserve potentially useful evidence. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988); *Cooper*, 255 F.3d at 1113; *see also Guam v. Muna*, 999 F.2d 397, 400 (9th Cir. 1993). The presence or

